

Service Date: October 22, 1999

DEPARTMENT OF PUBLIC SERVICE REGULATION
BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MONTANA

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IN THE MATTER OF Hot Springs Telephone)	UTILITY DIVISION
Company's Implementation of 1+ intraLATA)	
Dialing Parity)	DOCKET NO. D98.10.224
)	
)	ORDER NO. 6203

FINAL ORDER

INTRODUCTION AND PROCEDURAL BACKGROUND

1. On April 15, 1999, Hot Springs Telephone Company (hereafter Hot Springs or Company) filed an Application for Approval of its IntraLATA Equal Access Implementation Plan (Plan) with the Montana Public Service Commission (Commission). Hot Springs' Plan requests approval of the procedures and process it intends to use to implement 1+ intraLATA dialing parity (also known as equal access or presubscription).

2. Hot Springs filed its Plan in response to a bona fide request (BFR) it received from AT&T Communications of the Mountain States, Inc.'s. (AT&T) on October 6, 1998. AT&T requested that Hot Springs implement full 2-PIC intraLATA equal access in all of its exchanges.

3. On October 19, 1998, Hot Springs requested that it be given thirty days to "determine an appropriate response" to AT&T's BFR. On December 23, 1998, Hot Springs submitted a Motion for Extension of Time of six months to begin the process of implementing dialing parity pursuant to ARM 38.5.4103(b). On January 7, 1999, the Company informed the Commission that they would convert to 2-PIC dialing parity on October 1, 1999 pursuant to the

statutory obligations found at ARM 38.5.4101 *et seq.* Hot Springs requested that it commence implementing its dialing parity Plan beginning April 15, 1999. On January 20, 1999, the Commission granted Hot Springs' motion.

4. The Commission has adopted rules for intraLATA dialing parity implementation in Montana. 1998 Mont. Admin. Reg., No. 7, at 983-1003 (April 16, 1998) (the "dialing parity rules" or "rules"). *See* ARM 38.5.4101 through 38.5.4120. ARM 38.5.4120 requires Hot Springs to implement intraLATA dialing parity pursuant to a Commission-approved plan.

5. ARM 38.5.4120(1) allows interested parties a reasonable opportunity to comment on a LEC's intraLATA equal access plan. The Commission noticed Ronan's Plan on its weekly agenda; however, no party intervened.

6. Following a review of Hot Springs' Plan the Commission makes the following findings and conclusions.

FINDINGS OF FACT AND COMMISSION DECISION

7. The Commission established the intraLATA equal access implementation rules "to provide guidelines and procedures for the commission to carry out its duties pursuant to the Federal Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996)." ARM 38.5.4101, entitled "SCOPE AND PURPOSE OF RULES." Subsection (2) provides further indication of purpose in adopting the rules:

...The commission imposes this subchapter to encourage competitive entry, protect the public safety and welfare, ensure the continued quality of telecommunications services, and safeguard the rights of consumers while ensuring that the rates charged and services rendered by telecommunications services providers are just and reasonable.

The rules were adopted after giving opportunity to comment to all interested parties. They reflect a careful, reasoned consideration of all comments received, both in response to AT&T's

original petition for the rulemaking and in response to later formal rulemaking inquiries. They were adopted specifically for implementing intraLATA equal access in Montana.

8. ARM 38.5.4120(1) states that ILECs “shall file their toll dialing parity plans carrying out the intraLATA equal access presubscription implementation rules set forth in ARM 38.5.4101 through 38.5.4116.” ARM 38.5.4120(1) also provides that interested parties who wish to comment on a LEC’s toll dialing parity plan shall have a reasonable opportunity to do so.

9. ARM 38.5.4120 provides that Hot Springs’ Plan must describe how ARM 38.5.4101 through 38.5.4116 will be carried out and include information addressing the following:

- (a) detailed information explaining how and when carriers will be notified of the implementation schedule;
- (b) the language to be used in and the manner of distribution of, the customer notification letter;
- (c) a description of Hot Springs’ anticipated cost of implementation, including Hot Springs’ specific implementation costs, the vehicle that Hot Springs intends to use to recover implementation costs, and the cost recovery time frame; and
- (d) a description of Hot Springs’ proposed business office practices and sample scripts that demonstrate how its business office personnel will handle customer-initiated business office contacts with Hot Springs in its role as a local exchange provider in a competitively neutral manner following implementation.

We address the general subtopics of intraLATA equal access implementation with respect to Hot Springs’ Plan below:

A. Part II. Implementation Schedule

10. Hot Springs will convert to equal access in all its exchanges on October 16, 1999. The Company will implement the full “2-PIC” carrier selection methodology required by ARM 38.5.4103(2). Full 2-PIC allows an end user to select an intraLATA toll carrier and the same or

different interLATA toll carrier for their long distance calling. All residential, business and payphone customers will be offered intraLATA equal access via the 2-PIC method.

B. Part III. Customer Lists and Carrier Notification Procedures

11. *Carrier notification:* ARM 38.5.4120(3) requires Hot Springs provide notice to all registered interexchange carriers no less than 120 days prior to the actual implementation date. The notice must include the implementation schedule, terms and conditions of participation and ordering procedures. All carriers wishing to participate in presubscription must respond to Hot Springs within 30 days. Hot Springs will not allow participation by unregistered telecommunications providers.

12. On June 8, 1999, the Commission approved Hot Springs' carrier notification language and procedures pursuant to ARM 38.5.4120(3) (See Notice of Commission Action, D98.10.232, June 15, 1999).

13. Approval of Hot Springs' carrier notification procedure permits Hot Springs to notify registered carriers by means of the Commission-established electronic mailing list or "listserve". The "listserve" includes carriers who have registered on the Commission's website and have provided e-mail contact addresses. The Company elected to use the electronic "listserve" in lieu of first class mail. Hot Springs is required to acknowledge all interexchange carrier requests to participate in its equal access Plan within 72 hours of receipt of each request.

14. *Customer lists:* ARM 38.5.4105(2) requires a LEC or primary toll carrier make available to all registered carriers that intend to offer equal access a complete list of the primary toll carrier's customers by name, address and phone number within 45 days of receipt of a BFR. The Commission requires Hot Springs make available such list, on request, to all registered carriers intending to offer intraLATA equal access at a maximum rate of \$0.10 per customer

record. The Commission finds it in the public interest to waive ARM 38.5.4105(2) and not require Hot Springs to produce a cost study demonstrating the costs of producing the list.

15. *PIC change requests:* ARM 38.5.4116(1)(e) requires LECs to accept letters of authorization (LOAs) no earlier than 60 days prior to implementation. Hot Springs is required to begin accepting LOAs and customer requests for an intraLATA carrier selection no earlier than 60 days prior to October 16, 1999. In the case of multiple LOA submissions, the last dated LOA shall be processed. Hot Springs is required to accept and process LOAs that conform to ARM 38.5.3801 through ARM 38.5.3810, the emergency slamming rules adopted by the Commission in Docket No. L.99.1.1-RUL, and §69-3-1304, MCA.

C. Part IV: Customer Notifications, Education, and Safeguards

16. Customer notification is addressed in several of the Commission's rules. ARM 38.5.4120(1)(b) states that a LEC's plan must describe how notification to end users will be carried out and must include the language the LEC will use in its customer notification letter and describe the manner of distribution of such letter.

17. ARM 38.5.4105(4) requires all informational materials, forms and scripts to be "complete, clear and unbiased." It further requires local exchange carriers to promptly make any changes required by the Commission before using them. Pursuant to ARM 38.5.4104 and at least 30 days prior to its scheduled implementation, Hot Springs must provide written notification to subscribers that describes intraLATA dialing parity and explains presubscription procedures. Information provided pursuant to ARM 38.5.4104 shall also inform customers with existing interLATA PIC freezes on their accounts that their freeze will extend to their existing intraLATA toll carrier, in this case Hot Springs Long Distance, until the end users take action to change.

18. *Existing customer notification:* Hot Springs' Plan states that it will provide written notification to its customers describing intraLATA dialing parity and explaining presubscription procedures. Hot Springs attached as Exhibit C to its Plan, the proposed customer notification format. The Company states will provide customer notification as a separate mailing prior to September 16, 1999. As required by statute, existing customers will continue to have their intraLATA toll carried by their current intraLATA toll carrier. Hot Springs' Plan for notifying existing customers is consistent with Commission rules and its written notification contains a good explanation of intraLATA 1+ presubscription.

19. *New customer notification:* Hot Springs' Plan provides that all new customers who commence local service after the mailing to existing customers and before equal access presubscription is implemented shall be provided information about their carrier selection options at the time they sign up for local service. Customers who subscribe to local service between September 16 and October 16, 1999, will be provided a copy of this notification and information provided to existing customers.

20. New subscribers may select both their primary interLATA and intraLATA carriers or be assigned "no-PIC" status. New customers who do not make an affirmative intraLATA PIC selection will be blocked from toll calling, except for dial around protocol (e.g., 10-10-XXX) until they affirmatively choose an intraLATA toll carrier. New customers will be given 30 days after commencing local exchange service to select an intraLATA carrier free of charge. Presently, Hot Springs waives charges for interLATA PIC selections for 30 days after new service is installed and will follow this practice for intraLATA PIC selections as well. The Commission finds this to be in the public interest.

21. *Waiver period:* ARM 38.5.4111(1) states that “no charge shall be imposed for a customer’s initial selection of a primary intraLATA carrier. Each LEC shall allow customers to change their selection of a primary intraLATA carrier one time only at no charge within 90 days following implementation of intraLATA dialing parity in an exchange.” Hot Springs’ Plan states that no intraLATA PIC selection charge will be imposed for 90 days following the implementation of equal access. This is consistent with ARM 38.5.4111(1).

22. *PIC charges:* ARM 38.5.4111 states that PIC change charges shall be “the same as those imposed for changing interLATA carriers.” All subsequent intraLATA and interLATA PIC changes will be assessed a PIC change charge of \$5.00 per change. Simultaneous intraLATA and interLATA PIC changes will be assessed a single PIC change charge of \$5.00. This is constant with ARM 38.5.4111.

23. *Customer Safeguards:* ARM 38.5.4116 provides for some safeguards to apply to the business office practices Hot Springs will use when it implements intraLATA equal access. Hot Springs’ Plan provides that all customers who have an interLATA PIC freeze on their account will have that PIC freeze placed on their intraLATA account as well. It further provides that the Company will follow Montana statutes and administrative rules with regard to “slamming” and obtaining required authorizations for all PIC changes.

24. Hot Springs’ Plan provides that a list of all participating registered interexchange carriers who have responded during the 30-day period following Hot Springs’ carrier notice and their toll free telephone numbers will be attached to the customer notification letter. The notification provides procedures for changing from the present intraLATA carrier.

25. Hot Springs notice also informs end users that they may select an alternate intraLATA carrier either by directly contacting Hot Springs’ business office or indirectly by

contacting the selected IXC. Regardless how an end user selects an intraLATA carrier, Hot Springs will take and process each request in the same manner as it provides itself. The Commission concludes the notice to end users contains sufficient information to educate customers on intraLATA dialing parity and procedures for requesting a PIC change.

26. *Business office practices:* ARM 38.5.4116 provides for safeguards to ensure that the development of intraLATA competition will not be impeded by LEC practices following equal access presubscription. Subsection (1)(a) requires that Hot Springs' customer information and procedures used to provide new customers information about carrier selection options when they sign up for service be competitively neutral and approved by the Commission prior to their use.

27. Hot Springs' Plan states that its representatives will inform new local exchange end users of their right to select the intraLATA carrier of their choice and, if they make no choice, they will be required to dial a carrier access code to place these calls. New and existing customers may communicate their choices of carriers directly to Hot Springs through the local business office or they may do so indirectly through their selected carriers for either interLATA or intraLATA toll.

28. For all customer-initiated contacts regarding local service matters, ARM 38.5.4116(1)(b) includes important safeguards. It provides, "When handling customer-initiated contacts regarding local service matters such as a change in service, [LEC] business office personnel may not engage in promotional efforts for the local exchange carrier's toll service offerings." Subsection (1)(c) further provides that when a customer contacts a LEC's business office to change the PIC from the LEC to a competitor, "the transaction must be handled in a neutral manner (i.e., in the same manner as a PIC change from one competitor to another)."

29. Hot Springs states that it will handle all customer-initiated contacts for PIC changes in a neutral manner. Further, many of the Commission's previously expressed concerns about contact handling by local exchange carriers who provide intraLATA toll service apply to Hot Springs because intraLATA toll is provided by Hot Springs Long Distance. Hot Springs and Hot Springs Long Distance, *inter alia*, have the same business office and same directors. Therefore, the Commission imposes some requirements for these contacts.

30. Hot Springs is required to provide, in random order, the names of all carriers providing intraLATA interexchange service in its area. The random list shall be scrambled at least once per month.

31. ARM 38.5.4105(4) requires LECs to provide proposed business office scripts to the Commission for review as part of its implementation Plan. The rule requires that the scripts be filed so that they can be reviewed by the Commission prior to approval or modification of the Plan. Hot Springs is required to submit the scripts its customer service representatives will refer to and will be trained to use to discuss intraLATA dialing parity for new service requests and customer contacts for changes in service other than "general service" contacts.

32. Hot Springs submitted the following script:

You may choose the long distance company you would like to handle your intraLATA long distance calls (explain LATA boundaries if necessary and/or refer to map). This is the list of companies offering intraLATA long distance in our service territory. The list includes telephone numbers of each carrier. You will need to contact the carrier to find out about the rates offered by each carrier. If you request, I can read the list to you (it has 4 companies).

If you do not wish to make a selection at this time, you will have to dial a specific companies access code in order to make an intraLATA long distance call. If you already have a preference I can take your request now."

Hot Springs' script is sufficient to advise customers of their choices for intraLATA carriers and is competitively neutral as required by Commission rule.

33. The Commission recognizes that a script will not be appropriate for all calls. Some contacts will require Hot Springs' representatives adapt their conversation based on individual circumstances. However, the script provides the necessary information and as long as the representative conveys the information provided for in the script, such deviations are acceptable.

34. The Commission has imposed marketing restrictions for local exchange carriers who provide intraLATA toll. Hot Springs Long Distance provides intraLATA toll to Hot Springs' subscribers; therefore, reasonable LEC restrictions related to marketing on customer-initiated calls to Hot Springs' business office apply. The Commission concludes that it is reasonable to prohibit Hot Springs from initiating marketing and promotional activities for its intraLATA services on contacts for new service, transfers of service and number changes.

D. Part V: Costs Recovery

35. ARM 38.5.4120 requires Hot Springs' Plan to describe the anticipated cost of implementation, including its specific intraLATA presubscription costs, the vehicle that it intends to use to recover them, and the time frame for recovery. Hot Springs' Plan states that it will incur incremental costs to implement intraLATA dialing parity. Cited cost categories include: (1) switching upgrade to allow 2-PIC presubscription, (2) support systems, (3) customer notification, (4) office personnel training, and (5) implementation activities to migrate subscribers to their carrier of choice. All these costs are recoverable pursuant to ARM 38.5.4115.

36. Hot Springs did not submit cost support data defining the incremental costs associated with implementing intraLATA equal access nor does the company seek cost recovery. However, Hot Springs states that it will notify the Commission if and when it seeks to recover these costs.

37. The Commission will not require Hot Springs to provide a cost analysis and is satisfied with Hot Springs' proposal. The public interest is best served by waiving the requirement for cost information for Hot Springs. If Hot Springs incurs substantial unanticipated costs to implement dialing parity and files additional materials to support a surcharge, the Commission will address cost recovery at that time.

CONCLUSIONS OF LAW

1. The Commission has authority to supervise, regulate and control public utilities. Section 69-3-102, MCA. Hot Springs is a public utility offering regulated telecommunications services in the State of Montana. Section 69-3-101, MCA.

2. The Commission has authority to do all things necessary and convenient in the exercise of the powers granted to it by the Montana Legislature and to regulate the mode and manner of all investigations and hearings of public utilities and other parties before it. Section 69-3-103, MCA.

3. The Montana Public Service Commission is the state agency charged with regulating telecommunications carriers in Montana and properly exercises jurisdiction in this Docket pursuant to Title 69, Chapter 3, MCA.

4. Adequate public notice and an opportunity to be heard has been provided to all interested parties in this Docket, as required by the Montana Administrative Procedure Act, Title 2, Chapter 4, MCA.

ORDER

THEREFORE, based on the foregoing, IT IS ORDERED that Hot Springs' intraLATA dialing parity implementation Plan is approved as discussed herein.

DONE AND DATED this 17th day of August 1999, by a vote of 5-0.

BY ORDER OF THE MONTANA PUBLIC SERVICE COMMISSION

DAVE FISHER, Chairman

NANCY MCCAFFREE, Vice Chair

BOB ANDERSON, Commissioner

GARY FELAND, Commissioner

BOB ROWE, Commissioner

ATTEST:

Kathlene M. Anderson
Commission Secretary

(SEAL)

NOTE: Any interested party may request the Commission to reconsider this decision.
A motion to reconsider must be filed within ten (10) days. See ARM 38.2.4806.